

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUL 13 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

The Use of N11 Codes and Other )  
Abbreviated Dialing Arrangements )  
\_\_\_\_\_ )

CC Docket No. 92-105

ORIGINAL  
FILE

REPLY COMMENTS

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## EXHIBITS

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- 2 - BellSouth's Petition for Expedited Declaratory Ruling
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## SUMMARY

Commenters supporting the Commission's proposal have indicated their readiness to deliver new information services to the public as soon as a local abbreviated dialing service is made available in the marketplace. Other commenters opposing the Commission's proposal argue that there are better yet to be developed public uses of N11 codes that should be pursued in lieu of the Commission's proposal. In this reply, BellSouth explains why the Commission should permit local exchange carriers to use available N11 codes to provide local abbreviated dialing services now, subject to the possibility of recall should the Commission eventually determine that these codes could satisfy a more beneficial public use that the industry is willing to implement.

The Commission should specify in its rules the terms and conditions under which N11 codes used for local abbreviated dialing services must be returned. The Commission's rules should make it clear that customer use of N11 codes is conditioned upon consent to such terms and conditions. To enable customers to make fully informed decisions about the risks of providing such services, the Commission should issue its order in this proceeding prior to November 1, 1992.

Finally, the Commission should facilitate industry efforts to reach consensus on the optimal long-term use of N11 codes and the development of an alternative abbreviated dialing service that allows a significantly greater number of access arrangements for meeting customer and market needs.

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REPLY COMMENTS

BellSouth Corporation, on behalf of its telephone operating company, BellSouth Telecommunications, Inc. (BellSouth), hereby replies to the comments filed in this proceeding.

I. GENERAL REMARKS

While a number of enhanced services providers (ESPs) and industry participants have filed comments generally supporting the tentative conclusions reached in the NPRM,<sup>1</sup> the remaining comments reflect substantial opposition within the industry to the Commission's proposal. The Commission should modify its proposal to address the fundamental concerns which serve as a basis for this opposition. As explained below, the Commission's N11 service proposal can be modified to strike an appropriate balance between

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<sup>1</sup> Comments of LO/AD Communications; Jan Masek - Professional Business Systems; The Newspaper Association of America; Cox Enterprises, Inc. (Cox); Alternative Weekly Newspapers, New Times, Inc., Sasquatch Publishing, City Pages and Tucson Weekly. Other commenters support the assignment of N11 codes for abbreviated dialing services but with the general caveat that national uses should have priority over local service applications. See, Comments of Mobile Telecommunications Technologies Corporation (Mtel); MCI and Datatrex.

satisfying the near term market need for local abbreviated dialing services and maximizing the long-term public interest benefits to be derived from using this scarce national numbering resource.

Opposition to the NPRM focuses primarily on the belief that the use of N11 codes for local abbreviated dialing services is not the best use of this scarce and valuable public resource, notwithstanding the Commission's determination that there are no existing legal or regulatory impediments to such use. Those opposing the Commission's abbreviated dialing services proposal cite a variety of other hypothetical uses of N11 codes that they argue would better serve the public interest. These commenters object to the assignment of N11 codes for local abbreviated dialing services, even if on a temporary basis subject to recall, if such assignment would foreclose realization of these future service possibilities.

BellSouth shares the view that any rules adopted in this proceeding should not foreclose the use of N11 codes for future service applications deemed to provide greater public benefits. On the other hand, the Commission's rules should permit the use of N11 codes to satisfy existing market needs in the absence of Commission approval and industry agreement to implement a specific service deemed to be a more beneficial public use of N11 codes.

The comments indicate, with some exceptions<sup>2</sup>, that at least four of these codes (i.e., 211, 311, 511 and 711) currently are not being used for any purpose. BellSouth believes that it is in the public interest to allow these codes to be put into productive use for the benefit of the calling public, even if the scarcity of N11 numbers will only allow the services of a few service providers to be accessed by the public. It is better to allow new services to be deployed now under less than ideal but fair competitive circumstances than to deny the public the opportunity to receive the benefits of any abbreviated dialing services for the next few years. This interim use of N11 codes would not preclude the industry and the Commission from agreeing upon and subsequently implementing a substitute abbreviated dialing arrangement, such as NXX#, that could be made available to significantly more service providers.<sup>3</sup>

The Commission must determine whether it is in the public interest to allow this valuable public resource to "lie fallow"<sup>4</sup> for the next few years versus allowing that

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<sup>2</sup> Comments of NYNEX Telephone Companies n.7; The Puerto Rico Telephone Company p. 2; Southern New England Telephone Company (SNET) n.3; Pacific Bell and Nevada Bell p. 6; GTE p. 3; and The American Public Communications Council p. 2.

<sup>3</sup> See, BellSouth Reply to Opposition to Petition for Expedited Declaratory Ruling, filed March 26, 1992, a copy of which is attached hereto as Exhibit 1.

<sup>4</sup> Comments of Cox p. 3.

resource to be used by those service providers who are ready to undertake the business risk of using those codes now, even if only on a temporary basis, to provide new services to the public. This is the key issue which the Commission must decide.

The Commission should answer the fundamental objections raised in opposition to the NPRM by adopting rules which permit, but do not require, local exchange carriers (LECs) to offer local abbreviated dialing services to customers willing to accept the risk of loss should the Commission subsequently require the return of such codes for some other publicly beneficial purpose. If possible, LECs and customers willing to accept such risks should do so with full knowledge of the terms and conditions under which such codes may be recalled. Therefore, the Commission should issue its decision in this proceeding prior to November 1, 1992, which would precede the earliest date BellSouth could actually provision an N11 dialing service under its proposal.<sup>5</sup>

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<sup>5</sup> In its comments, Cox falsely accuses BellSouth of deliberately delaying the processing of its request for N11 service and suggests that BellSouth will not provide N11 service without an order from the Commission directing it to do so. Comments of Cox p. 6-7. Cox has chosen to mischaracterize events to suit its own theories rather than present the facts. It is a fact that BellSouth has already agreed to provide an abbreviated N11 dialing service in Georgia without a further order from the Commission. It is a fact that BellSouth provided Cox with a written commitment to provide the requested service within the 120 day time frame permitted under BellSouth's approved 120 day ONA (continued...)



In further response to the objections raised in the comments, the Commission should support industry efforts through the Information Industry Liaison Committee (IILC) or other appropriate industry forum to reach consensus on the most appropriate long-term public interest use of N11 codes and alternative abbreviated dialing arrangements for facilitating access to information services.

II. THE COMMISSION'S RULES SHOULD PERMIT BUT NOT REQUIRE LECs TO USE N11 CODES TO PROVIDE LOCAL ABBREVIATED DIALING SERVICES

Given the divergence of opinion and lack of industry consensus on specifically what constitutes the best use of N11 resources, it would not be in the public interest to require LECs to make N11 codes available for local abbreviated dialing services. Neither would it be in the public interest to prohibit LECs from offering such services given the absence of a better alternative use. The comments filed in opposition to the NPRM generally describe a number of other possible service alternatives for using N11 codes, but there is no indication of whether any of these services

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<sup>3</sup>(...continued)  
review process, subject to receiving the decision from the Commission allowing N11 codes to be used for that purpose. It is a fact that Cox's delay in completing the 120 day review form, whether by design or otherwise, materially frustrated and delayed BellSouth's ability to begin the 120 day review process. Contrary to what Cox would have the Commission believe, N11 codes are not the property of BellSouth to be assigned by BellSouth without regard to ascertaining the relevant policies of this Commission, the consistency of the proposed service request with the requirements of the NANP, and the technical and cost feasibility of developing the requested service.

will in fact be deployed in the near term.<sup>6</sup> Assuming that the Commission is satisfied that it has the authority to compel the return of such codes, the Commission should permit BellSouth and other interested LECs to offer local abbreviated dialing services.

By shifting the focus of its proposal to permitting rather than requiring the provision of abbreviated dialing services, the Commission can avoid imposing additional costs and risk upon those in the industry who strongly object to such undertaking in favor of pursuing the development of alternative N11 service applications that may eventually prove to be more publicly beneficial. At the same time, this approach gives other LECs such as BellSouth who have existing plans for the productive use of N11 service codes during the near term an opportunity to test the public benefit and demand for such services in the marketplace.<sup>7</sup>

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<sup>6</sup> For example, Bell Atlantic indicates that it is pursuing the development of advanced intelligent network (AIN) technology which could make one or two N11 codes "gateways" to services of hundreds, or even thousands, of enhanced service providers. Comments of Bell Atlantic p. 2. However, the technology will not be available until mid-1993 and there is no indication by Bell Atlantic, much less industry agreement, as to when a gateway N11 service application using AIN technology could be made available or whether the market will support the economic deployment of such use. Until the feasibility and industry agreement to deploy this service concept are established, it would not be appropriate to reserve codes for this application.

<sup>7</sup> A more complete description of BellSouth's abbreviated dialing service proposal appears in BellSouth's Petition for Declaratory Ruling which gave rise to this rulemaking proceeding. A copy of that petition is attached  
(continued...)

**III. THE COMMISSION SHOULD EXERT ITS PLENARY JURISDICTION OVER N11 ASSIGNMENTS BY ADOPTING RULES WHICH SPECIFY THE TERMS AND CONDITIONS UNDER WHICH N11 CODES ASSIGNED TO INDIVIDUAL CUSTOMERS MUST BE RETURNED FOR OTHER USES**

A number of the comments opposing the Commission's proposal are based, in part, upon concerns over whether the Commission can enforce the return of such codes for some other public purpose once they have been assigned.<sup>8</sup>

BellSouth shares this concern and recognizes the Commission's attempt to address the issue in the proposed rules.

BellSouth supports those comments calling for clear rules which specifically identify the terms and conditions under which codes may be recalled. Furthermore, the forced return of any such codes must be pursuant to the plenary authority and order of the Commission.

The rules adopted in this proceeding should clearly state:

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<sup>7</sup>(...continued)  
hereto as Exhibit 2 and incorporated herein by reference. The Commission stated in the NPRM that because it was undertaking this rulemaking proceeding, it would not act further on BellSouth's petition. Since the issues raised therein will be addressed in this proceeding, the petition has been rendered moot and BellSouth hereby voluntarily withdraws the petition as a separate matter for Commission consideration.

<sup>8</sup> See, Comments of Information Industry Association (IIA) p. 4; Bellcore p. 5; Canadian Steering Committee on Numbering p. 2; Southwestern Bell p. 9-10; BT North America p. 4; Ameritech p. 17; NYNEX p. 9-10; Pacific Bell and Nevada Bell p. 10-12; and Rochester Telephone p. 5.

1. That any assignment of N11 codes for use in connection with local abbreviated dialing services is conditioned on the customer's agreement to relinquish the code under the terms of the Commission's rules;
2. That the risk of any financial loss due to such recall is the sole responsibility of the customer and that a customer waives any right to damages or compensation due to such recall as a condition to use of such code;
3. That N11 codes are a part of the public domain and no customer obtains an ownership interest in the use of such codes, or the right to sell or transfer such codes to another, except for an assignment incidental to an acquisition or merger of an entity already using a code, as is allowed with other telephone numbers; and
4. That such rules and conditions are binding on all assignees and successors in interest.

There is considerable support for the position that the Commission has plenary jurisdiction over NANP code assignments.<sup>9</sup> However, as was pointed out in the comments, there is a legal question as to whether the Commission can delegate that authority to a third party such as the NANP Administrator.<sup>10</sup> Therefore, the Commission should clarify in its order and rules that any recall of assigned N11 service codes initiated by either the NANP Administrator or

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<sup>9</sup> NPRM at n.2.

<sup>10</sup> See, Comments of Cox p. 25-26.

pursuant to consensus reached in an appropriate industry forum must first be reviewed and affirmatively adopted by order of the Commission within a specified time after public notice and comment.

BellSouth continues to believe that six months public notice, including a commitment on the part of the Commission to issue an order either affirming or denying the recall within sixty days of the public notice, to be appropriate.<sup>11</sup> While BellSouth does not object to a longer notice period if deemed by the Commission to be in the public interest, it should be noted that a number of parties supported a six months notice requirement in their comments.<sup>12</sup>

IV. THE COMMISSION SHOULD ACTIVELY PROMOTE INDUSTRY EFFORTS TO REACH CONSENSUS ON THE MOST APPROPRIATE LONG-TERM USE OF N11 CODES AND THE DESIRABILITY OF ALTERNATIVE ABBREVIATED DIALING SERVICE ARRANGEMENTS.

As noted above, much of the opposition to the Commission's proposals is based upon the belief that the industry will reach consensus at some future time on more appropriate uses of N11 codes or more appropriate arrangements for satisfying the abbreviated dialing needs of information service providers. BellSouth acknowledges the possibility that the proposed use of N11 codes may not

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<sup>11</sup> See, BellSouth comments, filed June 5, 1992 at p. 4-5.

<sup>12</sup> See, Comments of LO/AD Communications p. 2; Datatrex p. 2; Ameritech p. 17; NYNEX p. 11-12; and Centel p. 3.

represent the most publicly beneficial long-term use.<sup>13</sup> Nor does BellSouth believe that N11 service codes represent the best long-term solution for satisfying the market need for abbreviated dialing services given the extremely limited number of N11 codes available for such use.

BellSouth supports the acceleration of efforts to reach industry consensus on what is the most desirable and cost effective long-term solution for meeting the information services market need for local abbreviated dialing.<sup>14</sup> BellSouth has already submitted this issue to the IILC for consideration.<sup>15</sup> BellSouth would welcome a statement from the Commission directing the industry to address this issue either in the IILC or other appropriate industry forum.

V. THE COMMISSION SHOULD PROVIDE FURTHER CLARIFICATION ON WHAT CONSTITUTES A REASONABLE AND NONDISCRIMINATORY ALLOCATION OF N11 SERVICE CODES UNDER THE COMMUNICATIONS ACT, WITHOUT PRESCRIBING ANY PARTICULAR ALLOCATION METHOD

Some commenters argue that if the Commission decides to permit or require the assignment of N11 codes for local abbreviated dialing, it should prescribe uniform assignment procedures to promote consistency and to minimize litigation

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<sup>13</sup> For example, BellSouth supports the recent effort initiated within the industry to examine the feasibility of using the 711 code for nationwide access to telecommunications relay services. See, Exhibit 3, attached.

<sup>14</sup> BellSouth Comments p. 9.

<sup>15</sup> Id.

over assignment issues.<sup>16</sup> Other commenters argue that the Commission should mandate a particular allocation method ranging from first-come, first-served<sup>17</sup> to elaborate allocation methodologies based on total points assigned in accordance with public interest priorities.<sup>18</sup>

BellSouth favors the Commission's tentative conclusion that additional allocation restrictions are unnecessary because Section 202(a) of the Communications Act already prohibits carriers from granting undue preferences or engaging in unreasonable discrimination.<sup>19</sup> However, in view of the concerns and conflicts expressed in the comments on this issue, the Commission should provide the industry with further guidance. In particular, the Commission should give specific examples of allocation methods which are permitted under the Communications Act, although not required.

For example, the Commission has already indicated that there is no legal or regulatory impediment to the assignment of N11 service codes in the manner proposed by BellSouth in the attached petition (i.e., Exhibit 2).<sup>20</sup> While other LECs

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<sup>16</sup> See, Comments of U S West p. 21-22 and Sprint p. 7-8.

<sup>17</sup> See, Comments of Cox Enterprises, Inc. p. 11-14; MCI p. 2-5; Newspaper Association of America p. 3-4; and Alternative Weekly Newspapers p. 5.

<sup>18</sup> See, Comments of LO/AD Communications p. 2-3.

<sup>19</sup> NPRM at para. 16.

<sup>20</sup> NPRM para. 3.

would not be obligated under the Commission's tentative conclusion to use this allocation method, the Commission should use this and other specific examples of allocation methods to provide further guidance to the industry.

Under BellSouth's allocation proposal, N11 codes will be assigned after approval of related state tariffs on a first-come, first-served basis, so long as total service requests received after tariff approval during the service request period (i.e., sixty (60) days) does not exceed available codes.<sup>21</sup> Under this approach, BellSouth will fill service orders on a first in time basis according to the order in which written service requests are received during the designated service request period. The service request period will begin on the third business day after the availability of the service in a local calling area is publicly announced by the company. The service request period will remain open for sixty (60) days and no service orders will be processed and activated during that period.

If total service requests received during the sixty day request period exceed total N11 codes available for assignment, all customers submitting service requests during that sixty day period would automatically participate in a

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<sup>21</sup> BellSouth originally proposed a service request period of ninety (90) days, but has subsequently concluded that a shorter sixty day period should suffice to enable customers to determine whether they are interested in obtaining an abbreviated dialing service arrangement under the terms and conditions described in the approved state tariff offering.



lottery to determine which of them receives service. The lottery will be conducted by an independent third party. Assignments will be limited to one code per entity, including entity subsidiaries and affiliates, per local calling area.<sup>22</sup>

Under BellSouth's proposed allocation method, all interested customers have an equal chance of obtaining a N11 service code based upon full knowledge of the relevant terms and conditions of service.<sup>23</sup> While there may still be a "race" to submit written requests for service following approval of related state tariffs and release of the public notice of service availability, this condition is substantially mitigated by the assurance that all who submit requests during the sixty day service request period will have an equal opportunity to obtain service via a lottery in the event total requests exceed supply.

The above allocation method eliminates the argument that BellSouth and other customers (e.g., Cox Enterprises) who participated in the service development process would have an unfair and discriminatory advantage under a first-come, first-served allocation method that allowed them to submit a request for service prior to notice to other

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<sup>22</sup> See generally, Exhibit 2.

<sup>23</sup> Thus, contrary to ITAA's comments, BellSouth and its affiliate companies will have no advantage over other customers in competing for the limited N11 service arrangements. Comments of ITAA p. 3.

competitive service providers of the availability and terms of service. Whatever competitive advantage any party might otherwise arguably have by virtue of participation in the service development process is rendered irrelevant under this approach.<sup>24</sup>

BellSouth has received over a dozen requests for N11 code assignments covering various geographic areas. Several of these requests were received prior to the release of this NPRM. None of the requests, however, can be said to represent a binding commitment on the part of the requesting party to purchase a particular abbreviated dialing service, at a particular price, under specified terms and conditions. However, if BellSouth assigned N11 service codes on the basis of when it received these requests, all of the Atlanta service codes would already have been allocated to the exclusion of all other customers.

It is axiomatic that the common carrier principle of first-come, first-served should only be applied to existing services or, at a minimum, to services for which the terms and conditions are sufficiently specific and known to enable

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<sup>24</sup> Of course, this would not preclude the Commission from granting companies such as Cox a preferential N11 service code assignment based on their contribution to the service deployment process if the Commission concludes that such assignment is, for public policy reasons, in the public interest. BellSouth and other LECS, on the other hand, do not have the authority to grant such assignments. The authority to grant preferential N11 service code assignments for public policy reasons resides, if at all, with the regulators rather than the LECs.

the parties to enter into a service agreement, even if that agreement is conditioned upon subsequent regulatory approvals. BellSouth's assignment methodology provides this level of certainty and fairness.

There are of course other allocation methods which may be equally reasonable and lawful under the Communications Act. In the decision adopted in this proceeding, the Commission should give specific examples of acceptable allocation methods as a way of providing the industry with additional guidance on this issue.

#### VI. CONCLUSION

There is an information services market need for local abbreviated dialing services which is not being met under today's North American Numbering Plan. BellSouth urges the Commission to permit but not require LECs to satisfy that need by making a limited number of N11 service codes available for such purpose, subject to recall should the Commission determine at a later date that these codes should be used to satisfy a more beneficial public use.

The Commission should specify the terms and conditions under which such codes must be returned. The Commission's rules should state that acceptance and use of such service code is specifically conditioned on customer consent to such terms and conditions. The Commission should further clarify, by giving some specific examples, what allocation methods are permitted but not required under the

Communications Act. In the interest of those customers who wish to provide services to the calling public under BellSouth's N11 service proposal, the Commission should issue its order in this proceeding prior to November 1, 1992.

Finally, the Commission should facilitate industry attempts to reach consensus on the optimal long-term use of N11 codes and the development of an alternative abbreviated dialing service that provides a significantly greater number of access arrangements for meeting that market need.

Respectfully submitted,

BELLSOUTH CORPORATION and  
BELLSOUTH TELECOMMUNICATIONS, INC.

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on Use of "N11" Codes for )  
Provision of Local Information )  
Services )  
 )

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REPLY TO OPPOSITION TO PETITION FOR  
EXPEDITED DECLARATORY RULING

BellSouth Corporation, on behalf of its telephone operating company, BellSouth Telecommunications, Inc. ("BellSouth"), hereby replies to the opposition filed by MCI Telecommunications Corporation (MCI) on March 16, 1992, in the above styled proceeding. MCI's opposition does not set forth sufficient facts or legal arguments to support dismissal of the petition.

The first argument raised by MCI in opposition to the petition is nothing more than an unsupported conclusory allegation. MCI claims that there is no concrete controversy at this time and the underlying factual issues regarding the numbering plan and the use of "N11" codes remain open and unsettled. However, MCI offers no facts to support this claim. Moreover, BellSouth's petition seeks to remove uncertainty as to the legal and policy issues raised by a specific service proposal, not to terminate a

particular controversy as suggested by MCI.<sup>1</sup> Accordingly, MCI's first argument is legally insufficient to warrant rejection of the petition.

MCI next argues that the proposed relief does not appear to be consistent with optimal long term plans for reform of the North American Numbering Plan or the public interest which, according to MCI, favors the allocation of available codes for interLATA and international service. This self-serving statement is also offered as a reason for dismissing the petition without offering any further explanation or facts to substantiate its validity. Thus, this argument also lacks merit.

What constitutes the optimal long term plan for reforming the North American Numbering Plan and for using "N11" codes need not control the resolution of the issues raised in the petition. As explained in the petition, the proposed "N11" service arrangements are interim in nature and do not purport to represent the optimal long term plan for use of "N11" codes. Information service providers who are assigned "N11" codes under BellSouth's proposal will use those codes subject to possible recall by the North American Numbering Plan Administrator should those codes be needed for use as NPA codes to avoid NPA exhaust prior to the implementation of interchangeable NPAs in 1995, or for use

<sup>1</sup> 47 C.F.R. Section 1.2 expressly states that the Commission may "issue a declaratory ruling terminating a controversy or removing uncertainty." (emphasis added).

as service access codes beyond 1995. (Petition p. 6). Additionally, enhanced service providers using these codes will be required to migrate upon six months notice to any standard abbreviated access arrangement for information services (e.g., "\*NXX" or "NNX#") subsequently agreed to by the industry and approved by the Commission. (Petition p. 9). Thus, BellSouth's proposal contemplates that the "N11" service arrangements will only be in service for an interim period, unless the industry and the Commission decide at some later date that the optimal long term public use is the one described in the proposal.

The petition does not ask the Commission to determine the optimal long term use of "N11" codes or to decide the optimal abbreviated dialing arrangement for local pay-per-call type information services. The petition is more narrowly drawn. It addresses only whether it is lawful under the Communications Act and the Commission's policies to begin using four specific "N11" codes in the proposed manner until the industry and the Commission resolve related long term public interest issues. As noted in the petition, BellSouth's proposal allows this to be done without prejudicing the resolution of the long term issues and without holding the deployment of these new services hostage to what might otherwise become a protracted industry proceeding. MCI's concerns would be more appropriately addressed in a separate proceeding which seeks to resolve

the long term issues alluded to in the opposition filed by MCI.

The subject petition is designed to remove legal uncertainty surrounding BellSouth's interim proposal. The assignment and use of a limited number of "N11" service arrangements during this interim period, subject to various restrictions as set forth in BellSouth's proposal, will not prejudice the industry or the Commission in determining how best to restructure the North American Numbering Plan to provide the optimal long term solution for meeting this service need.

While BellSouth knows of no Commission policy or requirement of the Communications Act which expressly prohibits the use or restriction of "N11" codes in the manner proposed in the petition, it is uncertain whether such codes can be legally assigned and restricted in this manner. BellSouth has brought this petition to remove that uncertainty. Thus, the petition provides a prima facie case for issuing a declaratory ruling under the Commission's rules.<sup>2</sup>

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<sup>2</sup> See, 47 C.F.R. Section 1.2.



For the above reasons and those reasons stated in the petition, BellSouth requests that the Commission grant the relief requested in the petition as soon as possible.

Respectfully submitted,

BELLSOUTH CORPORATION on behalf of  
BELLSOUTH TELECOMMUNICATIONS, INC.

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